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OFFICE OF PETITIONS

In re Application of	:	
Stephen Butz	:	DECISION ON PETITION TO
Application No. 09/976,481	:	WITHDRAW HOLDING OF
Filed: 12 October, 2001	:	ABANDONMENT
Atty Docket No. BUTZ-PA	:	

This is a decision on the petition filed on 9 June, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely respond to the non-final Office action mailed on 3 November, 2005. The filing of the present petition precedes the mailing of Notice of Abandonment.

Petitioner asserts that an amendment was timely filed by facsimile on 16 January, 2006. Petitioner asserts that the amendment was sent to the Examiner's personal facsimile number at the direction of the Technology Center receptionist because an old facsimile number was listed in the Office action.

The petition is dismissed because petitioners have not provided proper evidence that the facsimile was transmitted to the USPTO. Specifically, MPEP 711.03(c) states, in pertinent part:

Petition To Withdraw Holding of Abandonment Based on
Evidence That a Reply Was Timely Mailed or Filed

37 CFR 1.10(c) through 1.10(e) and 1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 CFR 1.10(c), (d), * (e)>, or (g)< (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date. Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application).

When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy

of the papers was filed with the statement under 37 CFR 1.8). > 37 CFR 1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 CFR 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP § 512.<

Any petition to withdraw the holding of abandonment based on a Certificate of Transmission by facsimile must include the following requirements:

- (1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and
- (2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the **original** response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512).

The petition lacks item (2) above. Petitioners have not shown that the correspondence was transmitted with a Certificate of Transmission in accordance with 37 CFR 1.8. The sending unit's report, without more, is not sufficient evidence of the timely filing of a response by facsimile. Any renewed petition should be accompanied by a copy of the Certificate of Mailing.

If petitioner is unable to provide evidence of the timely submission of the amendment by facsimile, petitioner may wish to consider filing a petition to revive under 37 CFR 1.137(b).

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**¹

¹ 37 CFR 1.181(f).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
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Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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